IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

APPEAL NO.970 OF 1997
IN
WRIT PETITION NO.1362 OF 1997

1. Union of India and
   others through General Manager,
   Western Railway, Churchgate, Bombay.
2. Divisional Railway Manager,
   Western Railway, Bombay Central,
   Bombay-400 008. ...Appellants.

Vs.

1. Paschim Railway Karmachari Parishad,
   Bombay-400 028.
2. Presiding Officer,
   Central Government Industrial Tribunal
   No.2, City Ice Building, Bombay-400 023. ...Respondents.

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Smt. N.V. Masurkar for the appellants.
Shri S.M. Dharap for the respondent No.1.

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CORAM : R. M. S.KHANDEPARKAR &
DR.D.Y.CHANDRACHUD, JJ.

January 15, 2007.

ORAL JUDGMENT (PER R. M. S. KHANDEPARKAR, J.):

Heard. The challenge is to the judgment and order dated 1st September 1997 in Writ Petition No.1362 of 1997. Though the challenge is on various grounds, it would not be necessary to address to all those grounds and suffice to consider the ground relating to the absence of jurisdiction to the CGIT to deal with the issue which was sought to be referred for its decision

and the secondly, non-consideration of the fact that the appellants were bonafide pursuing other remedies before the authority who had no jurisdiction to entertain the matter against the order passed by the CGIT.

2. Perusal of the impugned order discloses that the Learned Single Judge has disposed of the petition on two points. Firstly, in view of the order of the Division Bench dated 18th August 1997 in Writ Petition 488 of 1997, the appellants are bound to comply with the order passed by the CGIT. Secondly, the petition suffers from delay and laches for a period more than three years from the date of the passing of the award. By an order dated 18th August 1997 passed in Writ Petition No.488 of 1997, the Division Bench of this Court had observed that the Central Government Industrial Tribunal under award dated 22nd June 1994, had directed that the employee should be considered eligible for further promotion for the post of Assistant Electrical Foreman in the revised pay scale of Rs.1600-2660 and the said award had not been implemented and, therefore, it was necessary to implement the same within the time frame.

3. Considering the said observation of the Division Bench, the petition appeares to have been dismissed. It is pertinent to note that in the petition under consideration before the Learned Single Judge, the Petitioners-appellants had raised a specific point as regards absence of jurisdiction of the Central Government Industrial Tribunal to deal with the matter which was referred to it and a specific ground that was raised in the amendment to the petition reads thus:

> "(a) As the dispute in the reference pertained to matter of promotion of Class III employees of Railway who's service condition are governed by statutorily framed rules under Article 309 of the Constitution of India and instruction of Railway Board which are statutory in nature. Fresh grievances therefore pertained to persons concerned who are Government servants and for reddresal of their service matters a separate Central Administrative Tribunal is established and functioning from 1985 & hence it was without jurisdiction for Respondent nor to have decided the said reference."

4. Plain reading of the said ground discloses that the appellants had specifically raised the point of absence of jurisdiction to the Central Government Industrial Tribunal to deal with the matter which was urged for the adjudication. Apparently, the said point has not been considered by the Learned Single Judge while disposing of the Writ Petition. It is sought to be

contended on behalf of the Respondent that even the order nowhere discloses the said point was ever argued before the Learned Single Judge. As already observed, the plain reading of the impugned order discloses that the Learned Single Judge has dismissed the Writ Petition solely on two grounds viz., in view of the order dated 18th August 1997 and on the ground of delay and laches. The impugned order does not refer to any other ground which was raised by the appellants in the amendment to the petition. Be it as it may, the fact remains that the appellants had in fact raised the issue regarding absence of jurisdiction to deal with the issue referred to the Tribunal. The Tribunal could not have assumed jurisdiction merely by consent of the parties. It should be in terms of the provisions of law under which proceedings before the concerned Tribunal or Court are governed. Since the point goes to the root of the matter, it was necessary for the Learned Single Judge to deal with the said issue and to arrive at an appropriate finding in that regard. Without addressing the said issue, merely because the Division Bench by its order dated 18th August 1997 had held that the award was required to be implemented within the time frame, it could not have dismissed the petition. It was necessary for the Learned Single Judge to deal

with the said point before dealing with any other issue.

5. As regards the ground pertaining to delay and laches, undisputedly the award was passed on 22nd June 1994. The matter was carried before the Central Administrative Tribunal by the appellants and by an order dated 26th August 1996, the Tribunal declined to deal with it on the ground of absence of jurisdiction. It was thereafter that the appellants approached this Court by filing Writ Petition on 4th August 1997. It was, therefore, necessary for the Learned Single Judge to consider whether the appellants are entitled for exclusion of the period during which they were proceeding with another remedy before the Central Administrative Tribunal, and whether the petition filed within the period of one year from the date of rejection of the appeal on account of absence of jurisdiction can be said to suffer from laches. Without considering these aspects, the Learned Single Judge could not have dismissed the petition. In our considered opinion, the impugned order is liable to be set aside.

6. It is sought to be contended on behalf of the Respondent that after the passing of the award by the Tribunal and order dated

18th August 1997 by the Division Bench, the said award has already been implemented in relation to some of the employees and some of them have retired. Needless to say, any decision the Learned Single Judge may arrive at, cannot affect right of those employees who have already availed the benefit under the award.

7. In the result, therefore, with the above observations, the impugned order is set aside and the matter is remanded to the Learned Single Judge to deal with the petition afresh in accordance with the provisions of law. It is made clear that all the issues which arise for consideration in the petition are kept open. There shall be no order as to costs.

(R. M. S.KHANDEPARKAR, J.)

(DR.D. Y. CHANDRACHUD, J.)